

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
September 16, 2009 Session

**IN THE MATTER OF: J.D.L. (d.o.b. 10/27/05) and D.M.L. (d.o.b. 4/21/07),
Children Under the Age of Eighteen**

**Direct Appeal from the Juvenile Court for Davidson County
No. 94955 W. Scott Rosenberg, Juvenile Court Referee**

No. M2009-00574-COA-R3-PT - Filed December 2, 2009

The juvenile court terminated the parental rights of S.D.L. (“Mother”), B.D.T., J.G.P., and Unknown Father on February 20, 2009. The court found multiple grounds for termination and concluded that termination was in the best interests of the minor children. Only Mother appeals. We affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Juvenile Court Affirmed; and
Remanded**

DAVID R. FARMER, J., delivered the opinion of the court, in which HOLLY M. KIRBY, J. and J. STEVEN STAFFORD, J., joined.

Nicholas Perenich, Jr., for the Appellant, S.D.L.

Robert E. Cooper, Jr., Attorney General and Reporter, Michael E. Moore, Solicitor General, and Elizabeth C. Driver, Senior Counsel, for the Appellee, State of Tennessee, Department of Children’s Services.

Cynthia H. Moore, Guardian Ad Litem.

OPINION

I. Background and Procedural History

Mother is a young woman whose substance abuse has persisted throughout two pregnancies. The Tennessee Department of Children’s Services (“DCS”) first learned of Mother’s drug dependency after she gave birth to her first child, D.M.L. Mother admitted that she smoked marijuana while pregnant with D.M.L., but her first case closed after she failed to cooperate with Family Support Services and before she resolved her issues with drug abuse. DCS was alerted to similar concerns in April 2007 shortly after the birth of Mother’s second child, J.D.L. Mother admitted that she smoked marijuana laced with cocaine just one day before she gave birth to J.D.L.

DCS soon thereafter arranged for J.D.L. and D.M.L. to enter the care of Mother's cousin, H.P., as a "safety placement." Placement with H.P. offered Mother an opportunity to address her drug problem and become stable in the community without more drastic state intervention. DCS nevertheless petitioned to adjudicate the children dependent and neglected in May 2007.

J.D.L. and D.M.L. remained with H.P. until August 2007 when it became clear she could no longer care for the children. The parties subsequently crafted an agreement on DCS' dependency and neglect petition that would attempt to allow the children to remain with a relative. The ensuing agreed order of adjudication and disposition found Mother unable to care for the children due to her long-term drug addiction and resulting instability. The agreed order emphasized Mother's admission that she had regularly smoked marijuana since the age of thirteen and had regularly smoked marijuana laced with cocaine since the age of sixteen. Because Mother had not yet rehabilitated her drug addiction or become stable in the community, the order recognized that the children should remain safely placed away from Mother. The parties agreed to convene an emergency child and family team meeting to determine who might care for the children in lieu of state custody. The court awarded DCS custody of J.D.L. and D.M.L. on August 22, 2007, after Mother was unable to produce a suitable alternative placement.

DCS immediately thereafter convened a child and family team meeting at which it continued efforts to place Mother's children with a relative. Mother provided DCS with the names of two possible relative placements, but DCS decided to situate the children with a foster family after it determined Mother's relatives were either inappropriate or unwilling to serve as foster parents. DCS developed permanency plans for the children at a later child and family team meeting in September 2007. The permanency plans listed three desired outcomes: (1) Mother would provide a safe and drug free environment, (2) Mother would provide proper parenting for the children's current developmental stages, and (3) Mother would remain drug free. The actions needed to achieve these outcomes included submitting to random drug screens, obtaining stable housing and income, receiving a parenting assessment and following recommendations, receiving a mental health evaluation and following recommendations, receiving an alcohol and drug assessment and following recommendations, and adhering to the guidelines of the family treatment court ("Drug Court").¹ The permanency plans aimed to reunite Mother with her children or to allow the children to exit custody to live with a relative. A second set of permanency plans developed in March 2008 included several court-imposed additions. The second set of permanency plans required a full psychological examination, mandated attendance and completion of a drug treatment program, and added the goal of adoption.

DCS partnered with the Drug Court to provide services that would help Mother meet the goals of her parenting plans. DCS first arranged two therapeutic visitation sessions for Mother in September 2007, which Mother attended. Subsequent sessions, however, were suspended pursuant

¹ In addition to conducting hearings in Mother's termination case, the juvenile court administered the Drug Court program in which Mother participated.

to Drug Court policy after Mother failed to remain drug free.² DCS next strived to provide Mother with a mental health assessment. DCS initially attempted to schedule an intake appointment for Mother at the Mental Health Cooperative, but learned that only Mother could schedule the appointment. DCS thereafter helped Mother schedule several intake appointments at Life Care Family Services (“Life Care”) and the Mental Health Cooperative, but these efforts proved fruitless. Mother missed at least one appointment and later demanded to leave Life Care’s offices before receiving services. Linda Adcock (“Ms. Adcock”), the individual who transported Mother to Life Care, explained that Mother became “very irate and upset” when she learned she might have to wait up to two hours and possibly take a bus home. Mother eventually received a mental health evaluation at the Meharry Medical College Lloyd C. Elam Mental Health Center (“Meharry”). It is not clear when this assessment occurred and DCS did not receive a copy of the results.

Attempts to provide Mother with a parenting assessment encountered similar difficulties. DCS twice requested and received funding for a parenting assessment. The service provider, however, was unable to locate Mother to provide the assessment. Shaneille Keesee (“Ms. Keesee”), Mother’s initial family services worker, explained that Mother did not have a phone at the time. DCS’ most reliable methods of communication included visiting Mother’s home and leaving telephone messages with her grandmother. Ms. Keesee gave this contact information to the service provider and left a message with the grandmother specifically instructing Mother to call the provider. Mother did not contact the service provider and never received the initial assessment.

Mother eventually obtained a psychological and parenting assessment through the Drug Court. Ms. Adcock, a Life Care employee who provided services through the Drug Court program, arranged to meet Mother at a library within walking distance of Mother’s residence. Testing revealed that Mother’s reading and arithmetic skills were at a pre-kindergarten level and that she functioned at a borderline intellectual level. Mother’s parenting assessment further revealed that she was not able to appropriately consider the ages of her children, understand critical issues involved in parenting, or support the children’s feelings. Ms. Adcock tried to meet with Mother on a weekly basis to provide services to address her many needs, but Mother often missed appointments. Ms. Adcock explained that Mother’s receptiveness to consultation directly correlated with her ability to abstain from drug use. Ms. Adcock’s experience with Mother confirmed that persistent drug use stood as the primary impediment to Mother’s reunification with J.D.L. and D.M.L.

DCS and the Drug Court, recognizing the need to help Mother become drug free, combined efforts to assist Mother. DCS arranged a consultation with Mike Jones at Renewal House to assess Mother’s treatment needs after it discovered Mother was no longer enrolled in a recovery program. Mike Jones referred Mother to several outpatient programs. It is not entirely clear whether Mother received outpatient treatment, but the record shows she attended treatment at several inpatient facilities. Mother’s family services worker personally transported her to one such facility and filled out the paperwork necessary for admission. DCS additionally contacted at least two other facilities

² Drug Court policy required DCS to suspend visits until Mother twice tested negative. This is no longer court policy.

to seek placement for Mother. Related efforts included providing Mother with several bus passes, paying one month's rent, aiding with transportation, and assisting with her application for Social Security benefits.

The Drug Court supplemented DCS' efforts with drug monitoring and support services. Mother first enrolled in the Drug Court program in August 2007 near the time the juvenile court adjudicated her children dependent and neglected. There is little indication that Mother expended adequate effort to improve her circumstances while in the Drug Court program. Several of the Drug Court's orders indicate that Mother may not have complied with rules regarding drug use and that she often left without permission. Mother spent six days in jail in October 2007 for failure to appear in Drug Court. The Drug Court eventually removed Mother from the program in April 2008, but the record is not entirely clear on whether Mother's removal occurred due to noncompliance, as DCS asserts.

Mother's efforts at recovery largely met with failure. Several facilities dismissed Mother from their treatment programs. The reasons for dismissal included providing another patient with Benadryl, not complying with program rules, and having ringworm. As a result, DCS filed a petition to terminate Mother's parental rights in August 2008. DCS alleged as grounds abandonment by failure to visit or support, abandonment by failure to establish a suitable home, substantial noncompliance with the provisions of the permanency plans, and persistence of conditions. Only then did Mother's cousin, T.O., appear as a possible relative placement for the children. DCS performed a background check that did not reveal any information that would prohibit T.O. from serving as a relative placement, but DCS did not fully explore the possibility. Jennifer Williams ("Ms. Williams"), Mother's second family services worker, explained that DCS did not perform a home evaluation because it believed placement with the foster mother was in the best interests of the children. The children did not know T.O., she had not visited them, and DCS had already filed a termination petition. Ms. Williams knew of no DCS policy that would prevent relative placement after a termination petition is filed, but concluded that the children should remain in a stable placement.

Subsequent to the filing of the termination petition, Mother completed Meharry's three-month intensive program for expectant mothers in December 2008.³ Mother nevertheless did not comply with a single requirement of her release. Mother received a detailed list of instructions, which Meharry explained to her, to follow upon release from the drug treatment program. The discharge instructions included attending ninety Alcoholics Anonymous or Narcotics Anonymous meetings in ninety days, taking medication as instructed, and attending medical appointments. Mother admittedly did not complete, or attempt to complete, a single requirement. She instead went

³ Also subsequent to the filing of the termination petition, Mother gave birth to her third child. DCS investigated a referral concerning this child, but did not take action to remove the child prior to the termination hearing.

out to clubs and twice consumed alcohol, which is considered a relapse.⁴ Mother explained at the termination hearing that she imbibed to refrain from using other drugs. She further acknowledged that she did not believe that many of the requirements of her discharge were important including the requirement to attend Narcotics Anonymous meetings. When asked whether she had attempted to find a sponsor, Mother explained that she did not have a sponsor, did not want one, and did not need one.

The juvenile court conducted Mother's termination hearing on January 15, 2009. The court found clear and convincing evidence to support the grounds of abandonment by failure to establish a suitable home, persistence of conditions, and substantial noncompliance with the provisions of the permanency plans. The court also found clear and convincing evidence that termination was in the best interests of the children. The court incorporated its findings into a written order dated February 20, 2009. Mother timely filed a notice of appeal.

II. Issues Presented

Mother presents the following issues for our review as restated:

(1) Whether DCS made reasonable efforts to reunify the children with Mother and to place the children with a relative;

(2) Whether the juvenile court erred when it found clear and convincing evidence to support the grounds of failure to establish a suitable home, substantial noncompliance with the provisions of the permanency plans, and persistence of conditions;

(3) Whether DCS presented clear and convincing evidence to show that termination of Mother's parental rights was in the best interests of the children.

III. Standard of Review

This Court reviews a trial court's findings of fact *de novo* upon the record, according a presumption of correctness to the findings unless a preponderance of the evidence is to the contrary. Tenn. R. App. P. 13(d). This Court will not reevaluate the determinations of a trial court based on an assessment of credibility unless clear and convincing evidence is to the contrary. *In re M.L.D.*, 182 S.W.3d 890, 894 (Tenn. Ct. App. 2005) (citation omitted). This Court reviews the record *de novo* where the trial court has not made a specific finding of fact. *In re Valentine*, 79 S.W.3d 539,

⁴ Ms. Adcock explained that Mother's completion of treatment did not necessarily guarantee a successful recovery. Ms. Adcock feared that Mother's situation placed her "in high potential for relapse and for falling back into repetitive old behaviors." She explained that, "Past history would bear that if you take a person and put them back in their original environment and they do not have a high resource of skills to support them and to help them remain compliant, the likelihood is that they would probably relapse." Ms. Adcock's observations ultimately proved true in this case after Mother failed to take advantage of the resources available to her.

546 (Tenn. 2002). No presumption of correctness attaches to a trial court's conclusions of law. Tenn. R. App. P. 13(d); *Bowden v. Ward*, 27 S.W.3d 913, 916 (Tenn. 2000).

Tennessee Code Annotated section 36-1-113 governs the termination of parental rights. The Code provides, in pertinent part:

- (c) Termination of parental or guardianship rights must be based upon:
 - (1) A finding by the court by clear and convincing evidence that the grounds for termination of parental or guardianship rights have been established; and
 - (2) That termination of the parent's or guardian's rights is in the best interests of the child.

Tenn. Code Ann. § 36-1-113(c)(1)-(2) (2005 & Supp. 2009). This two-step analysis requires courts to consider "whether the trial court's findings, made under a clear and convincing standard, are supported by a preponderance of the evidence." *In re F.R.R., III*, 193 S.W.3d 528, 530 (Tenn. 2006). "Although the 'clear and convincing evidence' standard is more exacting than the 'preponderance of the evidence' standard, it does not require the certainty demanded by the 'beyond a reasonable doubt' standard." *In re M.A.B.*, No. W2007-00453-COA-R3-PT, 2007 WL 2353158, at *2 (Tenn. Ct. App. Aug. 20, 2007)(*no perm. app. filed*). "Clear and convincing evidence is evidence that eliminates any substantial doubt and that produces in the fact-finder's mind a firm conviction as to the truth." *Id.* (citation omitted).

The clear and convincing standard is necessary because parents have a fundamental right to the care and custody of their children. *Santosky v. Kramer*, 455 U.S. 745, 768-69 (1982); *In re Drinnon*, 776 S.W.2d 96, 97 (Tenn. Ct. App. 1988). "No civil action carries with it graver consequences than a petition to sever family ties indelibly and forever." *In re C.M.M.*, No. M2003-01122-COA-R3-PT, 2004 WL 438326, at *4 (Tenn. Ct. App. Mar. 9, 2004). The termination of parental rights eliminates "all of the rights, responsibilities, and obligations of the parent[]," Tenn. Code Ann. § 36-1-113(d)(3)(C)(i) (2005 & Supp. 2009), and removes a parent's "right to object to the child's adoption or thereafter, at any time, to have any relationship, legal or otherwise, with the child." Tenn. Code Ann. § 36-1-113(d)(3)(C)(iii) (2005 & Supp. 2009). The heightened burden of proof in parental termination cases guards against unwarranted severance of the constitutionally protected parent-child relationship. *In re M.W.A., Jr.*, 980 S.W.2d 620, 622 (Tenn. Ct. App. 1998).

Additionally, "[t]he heightened burden of proof in parental termination cases requires us to distinguish between the trial court's findings with respect to specific facts and the 'combined weight of these facts.'" *In re T.L.N.*, No. M2008-01151-COA-R3-PT, 2009 WL 152544, at *3 (Tenn. Ct. App. Jan. 21, 2009) (*no perm. app. filed*) (citing *In re M.J.B.*, 140 S.W.3d 643, 654 n.35 (Tenn. Ct. App. 2004)). "Although we presume the trial court's specific findings of fact to be correct if they are supported by a preponderance of the evidence, 'we are the ones who must then determine whether the combined weight of these facts provides clear and convincing evidence supporting the trial court's ultimate factual conclusion.'" *Id.* (quoting *In re M.J.B.*, 140 S.W.3d at 654 n.35).

IV. Analysis

A. Reasonable Efforts

Mother first argues that DCS did not make reasonable efforts to reunite her with her children. The General Assembly has provided that termination is not appropriate unless DCS makes reasonable efforts to reunite children with their parents. *See* Tenn. Code Ann. § 37-1-166(a)(1)-(2) (2005). DCS has the burden to establish reasonable efforts. Tenn. Code Ann. § 37-1-166(b) (2005). The grounds of abandonment, persistence of conditions, and substantial noncompliance implicate DCS' duty to make reasonable efforts. *See In re Tiffany B.*, 228 S.W.3d 148, 151, 159 (Tenn. Ct. App. 2007) (vacating a finding of abandonment, substantial noncompliance, and persistence of conditions for failure to make reasonable efforts); *see also In re C.M.M.*, No. M2003-01122-COA-R3-PT, 2004 WL 438326, at *7 n.27 (Tenn. Ct. App. Mar. 9, 2004) (noting that termination based on grounds in Tennessee Code Annotated section 36-1-113(g)(1)-(3) generally requires reasonable efforts).

As this Court has previously stated,

Where the Department seeks to terminate parental rights on a ground that implicates the Department's obligation to use reasonable efforts to make it "possible for the child to return safely to the child's home," Tenn. Code Ann. §§ 37-1-166(a)(2), -166(g)(2), those reasonable efforts must be proved by clear and convincing evidence. *In re B.B.*, No. M2003-01234-COA-R3-PT, 2004 WL 1283983, at *9 (Tenn. Ct. App. June 9, 2004) (citing *In re C.M.M.*, 2004 WL 438326, at *7-8). Thus, the Department ha[s] the burden to prove by clear and convincing evidence that it exercised reasonable care and diligence to provide services reasonably necessary to meet Mother's needs to assist her to fulfill her obligations under the permanency plans. *In re Valentine*, 79 S.W.3d at 546; *In re C.M.M.*, 2004 WL 438326 at *8; Tenn. Code Ann. § 36-1-113(c). This burden require[s] that the Department present sufficient evidence to enable us to conclude, without serious or substantial doubt, that the efforts were reasonable under the circumstances. *In re Valentine*, 79 S.W.3d at 546; *In re C.D.B.*, 37 S.W.3d 925, 927 (Tenn. Ct. App. 2000); *see Walton v. Young*, 950 S.W.2d 956, 960 (Tenn. 1997).

The goals and requirements set forth in permanency plans may not be arbitrary or unreasonable. To the contrary, they must be directed toward remedying the conditions that led to the child's removal from the parent's custody. *In re Valentine*, 79 S.W.3d at 547; *In re M.J.B.*, 140 S.W.3d 643, 656 (Tenn. Ct. App. 2004); *In re L.J.C.*, 124 S.W.3d 609, 621 (Tenn. Ct. App. 2003).

"The success of a parent's remedial efforts generally depends on the Department's assistance and support." *In re Giorgianna H.*, 205 S.W.3d 508, 518 (Tenn. Ct. App. 2006). Accordingly, the Department's employees have an affirmative duty to utilize

their education and training to assist parents in a reasonable way to address the conditions that led to the child's removal and to complete the tasks stated in the plan. *In re Giorgianna H.*, 205 S.W.3d at 519; *In re J.L.E.*, No. M2004-02133-COA-R3-PT, 2005 WL 1541862, at *14 (Tenn. Ct. App. June 30, 2005); *In re C.M.M.*, 2004 WL 438326, at *7; *In re D.D.V.*, No. M2001-02282-COA-R3-JV, 2002 WL 225891, at *8 (Tenn. Ct. App. Feb. 14, 2002). This duty exists even if the parent does not ask for assistance. *In re C.M.M.*, 2004 WL 438326, at *7. The importance of the Department's role in this regard has been emphasized by this court on numerous occasions. *In re B.L.C.*, No. M2007-01011-COA-R3-PT, 2007 WL 4322068, at *8 (Tenn. Ct. App. Dec. 6, 2007) (no Tenn. R. App. P. 11 application filed); *In re C.M.M.*, 2004 WL 438326, at *7 (stating that "[i]n many circumstances, the success of a parent's remedial efforts is intertwined with the efforts of the Department's staff to provide assistance and support"); *In re J.A.W.*, No. M2007-00756-COA-R3-PT, 2007 WL 3332853, at *4 (Tenn. Ct. App. Nov. 8, 2007); *In re Randall B., Jr.*, No. M2006-00055-COA-R3-PT, 2006 WL 2792158, at *5-6 (Tenn. Ct. App. Sept. 28, 2006).

Reasonable efforts are statutorily defined as the "exercise of reasonable care and diligence by the department to provide services related to meeting the needs of the child and the family." Tenn. Code Ann. § 37-1-166(g)(1). The factors the courts are to use to determine reasonableness include: (1) the reasons for separating the parents from their children, (2) the parents' physical and mental abilities, (3) the resources available to the parents, (4) the parents' efforts to remedy the conditions that required the removal of the children, (5) the resources available to the Department, (6) the duration and extent of the parents' efforts to address the problems that caused the childrens [sic] removal, and (7) the closeness of the fit between the conditions that led to the initial removal of the children, the requirements of the permanency plan, and the Departments efforts. *In re Tiffany B.*, 228 S.W.3d 148, 158-59 (Tenn. Ct. App. 2007) (footnote omitted) (citing *In re Giorgianna H.*, 205 S.W.3d at 519).

In re R.L.F., 278 S.W.3d 305, 315-17 (Tenn. Ct. App. 2008) (emphasis omitted).

Our inquiry, however, is not solely limited to the question of whether DCS exerted reasonable efforts to reunite parent and child. Although DCS bears an affirmative duty to exercise skill and diligence in assisting parents, it is equally clear that DCS' efforts need not rival those of the mythical figure Atlas. The general assembly did not place the burden to reunify parent and child on DCS' shoulders alone. *State, Dep't of Children's Servs. v. Estes*, 284 S.W.3d 790, 801 (Tenn. Ct. App. 2008). Nor must DCS make "Herculean" efforts. *Id.* As we have previously explained, the road to reunification is a two-way street. *In re R.C.V.*, No. W2001-02102-COA-R3-JV, 2002 WL 31730899, at *12 (Tenn. Ct. App. Nov. 18, 2002). "Parents must also make reasonable efforts to rehabilitate themselves and to remedy the conditions that required them to be separated from their children." *Estes*, 284 S.W.3d at 801 (citing *In re R.C.V.*, 2002 WL 31730899, at *12).

Mother argues that DCS did not make reasonable efforts to address her cocaine addiction, which was the primary reason for removal. Mother asserts that DCS did not expend sufficient effort to get Mother into treatment programs and that DCS failed to adequately consider her cognitive and socioeconomic issues. Mother contends that she would have successfully completed treatment earlier had DCS made reasonable efforts and that DCS did little to assist her after she completed treatment. Mother cites this Court's decision in *In re M.J.M., Jr.*, No. M2004-02377-COA-R3-PT, 2005 WL 873302 (Tenn. Ct. App. Apr. 14, 2005), for the proposition that DCS should have known that spending its one-time funds to aid Mother with housing before she successfully completed drug treatment would prove futile.

This Court addressed a similar argument in *In re Z.V.S.P.*, No. M2009-00058-COA-R3-PT, 2009 WL 1910919 (Tenn. Ct. App. July 1, 2009) (*no perm. app. filed*). DCS intervened in *In re Z.V.S.P.* after receiving reports that the mother often left her children unattended. *In re Z.V.S.P.*, 2009 WL 1910919, at *1. The mother tested positive for cocaine and benzodiazepines during DCS' investigation. *Id.* During the termination proceeding, DCS drafted permanency plans with the following desired outcomes: "(1) to be drug and alcohol free; (2) to have a healthy and stable relationship with the children; (3) to provide monetarily for the children; (4) to have a better understanding of her parenting skills and her parenting needs; and (5) to comply with all orders of the court and rules of probation." *Id.* The mother completed some of the requirements of her permanency plans, but was unable to make substantial progress due to repeated incarcerations over a two-year period. *Id.* at *1-3. The juvenile court terminated the mother's parental rights on the grounds of abandonment by failure to establish a suitable home, persistence of conditions, and substantial noncompliance. *Id.* at *3.

The mother in *In re Z.V.S.P.* argued on appeal that DCS did not make reasonable efforts to reunify her with her children. The mother maintained that DCS did not prove that it provided her with the recommended drug and alcohol treatment and that "DCS should have known that their efforts to assist Mother to provide a suitable home for the children would be futile without Mother first completing drug treatment." *Id.* at *7. Mother cited *In re M.J.M., Jr.* in support of her argument. *Id.* We explained that in *In re M.J.M., Jr.* DCS did not make reasonable efforts to help mother overcome formidable barriers to reunification despite her commendable individual efforts:

In *In re M.J.M.*, DCS sought to terminate the parental rights of a mother of three children after the children were in DCS custody for only six months. The court held that given the severity of the mother's addiction to methamphetamines and the fact that the permanency plan established a one year goal for completing the assigned tasks, termination was premature since DCS "gave up" on the mother after only six months. *In re M.J.M.*, 2005 WL 873302, at *10-11. In addition to the fact that DCS prematurely "gave up" on the mother, the court found it significant that in the months before trial the mother had made extensive efforts towards completing the requirements of the permanency plan without any assistance from DCS; she had completed 95% of her drug treatment program, obtained housing, found a job, had

access to transportation, cleared up all her pending legal proceedings and had obtained a referral to a psychiatrist for a mental health assessment. *Id.* at *11.

In re Z.V.S.P., 2009 WL 1910919, at *7 (Tenn. Ct. App. July 1, 2009) (*no perm. app. filed*).

This Court in *In re Z.V.S.P.* found Mother's reliance on *In re M.J.M., Jr.* "misplaced." *Id.* We noted that DCS discussed housing options with the mother upon her release from jail, provided her with a list of income-based housing, offered to pay her first month's rent, gave her a list of outpatient drug treatment facilities, and offered her information on inpatient facilities when she expressed a preference to attend inpatient treatment. *Id.* at *7-8. DCS attempted to aid the mother with her drug problem for nearly two years and its efforts to get the mother into treatment coincided with its efforts to help the mother establish suitable housing. *Id.* at *7. The proof further established that DCS conducted four child and family team meetings, provided two alcohol and drug assessments, and arranged a parenting assessment after three unsuccessful attempts due to the mother's inaction. *Id.* at *8. We concluded that the evidence in the record fully supported the juvenile court's determination that DCS made reasonable efforts. *Id.*

The evidence in the record warrants the same conclusion here. DCS' services to assist Mother reunify with her children included obtaining funding for a parenting assessment, providing therapeutic visitation, providing bus passes, providing transportation, providing case management services, arranging a drug assessment and consultation, paying one month's rent, aiding Mother with her application for Social Security benefits, contacting Mother regularly, and consulting with the Drug Court and related professionals.⁵ DCS' efforts to help Mother obtain housing correlated with its efforts to help Mother beat her drug addiction. DCS provided Mother with recovery information and solicited several different facilities to serve as housing and treatment placements for her. Unlike *In re M.J.M., Jr.*, this is not a case where DCS prematurely gave up on Mother or where Mother made significant efforts in the absence of aid from the state. Rather, Mother's efforts were substandard at best throughout the majority of DCS' involvement.

We do not read *In re M.J.M., Jr.* to suggest that DCS must withhold all one-time assistance until a parent completes drug treatment, but rather as recognizing that DCS should exercise discretion to withhold funding if it is clearly apparent that it will have no effect. This Court in *In re M.J.M., Jr.* highlighted Mother's extenuating circumstances:

D.M. was beset with serious problems during the four months immediately following the removal of her children from her custody. In addition to facing incarceration for her possession and use of methamphetamine, she had the challenge of finding effective treatment for her addiction and of somehow securing employment to enable her to support herself and her children. As if these tasks were not difficult in and of themselves, D.M. had no transportation of her own and was living in a locale that

⁵ It appears that DCS did not provide Mother with the parenting services that Ms. Adcock recommended. This failure is not fatal to DCS' position under the present set of facts.

was entirely unfamiliar to her without family or friends to provide her with support and assistance.

In re M.J.M., Jr., 2005 WL 873302, at *7 (Tenn. Ct. App. Apr. 14, 2005). This Court found DCS' efforts "woefully deficient and unreasonable" because "[d]espite its knowledge of [the mother's] predicament, the Department simply gave her a printout of rental properties in the Cookeville area and offered to provide [the mother] with 'flex funds' to assist her with her first month's rent, security deposits, and utility bills." *Id.* We further concluded under the facts of that case that DCS "knew or should have known that any efforts to find [the mother] housing before she addressed her methamphetamine addiction would be for naught."⁶ *Id.*

We find little reason to second-guess DCS' efforts under the present circumstances. DCS reasonably expended its one-time funds to help Mother maintain housing while offering her an opportunity to attend drug treatment. DCS provided these funds only after Mother reported that J.C. Napier homes was preparing to evict her.⁷ Considering the totality of the facts, we conclude that DCS exercised reasonable care and diligence to reunite Mother with her children when accounting for Mother's mental abilities, the resources available to her including services through the Drug Court, her cumulative efforts to become drug free, and the duration of DCS' efforts. *See generally In re J.C.D.*, 254 S.W.3d 432, 445-47 (Tenn Ct. App. 2007) (analyzing the question of reasonable efforts under similar facts).

We next address Mother's argument that DCS did not make reasonable efforts to place the children with a relative. Mother submits that DCS' obligation to use reasonable efforts extends to each goal in her permanency plans including the goal of relative placement. She cites Tennessee Code Annotated section 37-2-403(d), which provides:

Whenever a child is removed from such child's home and placed in the department's custody, the department shall seek to place the child with a fit and willing relative *if*

⁶This Court in *In re Z.V.S.P.* placed some significance on the difference between an addiction to methamphetamine and an addiction to cocaine and marijuana. We described the mother's drug problems in *In re Z.V.S.P.* as "not nearly as severe as those of the mother in *In re M.J.M.*" *In re Z.V.S.P.*, 2009 WL 1910919, at *7. In a footnote, we added,

We do not mean to imply that marijuana or cocaine use do not cause serious addiction or dependency, but we merely point out that the court in *In re M.J.M.*, in holding that DCS had not made reasonable efforts because it had not continued to assist Mother to get drug treatment after six months of trying, placed great emphasis on the extreme destructive power of methamphetamines and the drug's high rate of recidivism as compared to other abused substances.

Id. at *7 n.8.

⁷Ms. Keesee explained that DCS is very hesitant to pay for rent. DCS prefers to expend its one-time funds when it has reason to believe that the parent will be able to keep current on future payments. DCS provided funds in this case under the assumption that Mother would successfully reinstate her Social Security benefits.

such placement provides for the safety and is in the best interest of the child. Notwithstanding any provision of this section or any other law to the contrary, whenever return of a child to such child's parent is determined not to be in the best interest of the child, then such relative with whom the child has been placed shall be given priority for permanent placement or adoption of the child prior to pursuing adoptive placement of such child with a non-relative.

Tenn. Code Ann. § 37-2-403(d) (2005) (emphasis added).

This Court recently considered an analogous argument in *In re O.J.B.*, No. W2009-00782-COA-R3-PT, 2009 WL 3570901 (Tenn. Ct. App. Nov. 2, 2009). The parent in *In re O.J.B.* argued that DCS did not make reasonable efforts to place a child with an aunt. *In re O.J.B.*, 2009 WL 3570901, at *9. This Court disagreed and explained:

This statute . . . governs permanency plans for children in foster care. In *In re K.L.D.R.*, No. M2008-00897-COA-R3-PT, 2009 WL 1138130, at *8 (Tenn. Ct. App. Apr. 27, 2009), another parental termination case, a mother similarly argued that DCS “failed to attempt to place [the child] with a fit and willing relative pursuant to Tenn. Code Ann. § 37-2-403(d).” The Court stated that “this issue concerns custody and should have been raised in the dependency and neglect proceeding. It is not a basis to defeat a petition to terminate parental rights.” *Id.* In any event, however, “T.C.A. § 37-2-403(d) does not mandate relative placement. Rather, the statute requires DCS to consider such placement in light of the safety and best interest of the child.” *State, Dept. of Children’s Services v. Hardin*, No. W2004-02880-COA-R3-PT, 2005 WL 1315812, at *16 (Tenn. Ct. App. May 26, 2005). We have also recognized that because “reunification is a two-way street,” a parent cannot be heard to complain when a relative who initially inquires about custody then fails to take any further action, so that the relative’s lack of consideration for placement was due to his or her own failure to act. *In re Jeremiah T.*, No. E2008-02099-COA-R3-PT, 2009 WL 1162860, at *10 (Tenn. Ct. App. Apr. 30, 2009).

In re O.J.B., 2009 WL 3570901, at *9. We concluded that DCS made reasonable efforts under the circumstances because the aunt decided not to pursue placement when she learned she would be responsible for the child’s health care. *Id.*

DCS similarly made reasonable efforts here. DCS diligently evaluated every relative Mother submitted for placement when H.P. determined she could no longer care for the children. T.O. did not come forward until the children had been in custody for twelve months and after DCS had filed a termination petition. DCS maintained at the termination hearing that placement of the children with T.O. was not in their best interests. The juvenile court concurred and concluded that “[p]resenting a relative at that late date is not a realistic or viable alternative to State custody.” We agree. Any failure to consider T.O. as a relative placement occurred due to her own inaction and

failure to pursue placement for twelve months preceding the filing of the termination petition. DCS prudently considered the best interests of the children in determining whether to investigate placement with T.O. and made reasonable efforts to reunite the children with their relatives under the facts of this case. We hold that DCS made reasonable efforts to reunify Mother with her children and to place the children with a relative.

B. Grounds

This Court will not reverse a termination decision for failure to establish grounds so long as a preponderance of the evidence clearly and convincingly demonstrates at least one of the statutorily provided grounds for termination. *State, Dep't of Children's Servs. v. Mims*, 285 S.W.3d 435, 449 (Tenn. Ct. App. 2008) (citation omitted). The grounds before this Court are abandonment by failure to establish a suitable home pursuant to Tennessee Code Annotated section 36-1-113(g)(1), failure to remedy the conditions which led to the children's removal pursuant to Tennessee Code Annotated section 36-1-113(g)(3), and substantial noncompliance with the requirements of the permanency plans pursuant to Tennessee Code Annotated section 36-1-113(g)(2).

i. Abandonment

Mother raises several issues with respect to the juvenile court's finding of abandonment by failure to establish a suitable home. She first submits that DCS did not make reasonable efforts to assist her establish a suitable home in the four months following removal. Mother argues that the safety placement with H.P. required DCS to make reasonable efforts beginning in May 2007 and that DCS made no efforts to aid Mother until August 2007. Mother argues, in the alternative, that DCS failed to make reasonable efforts during the four-month period after it obtained legal custody of the children. Mother also submits that clear and convincing evidence did not support the juvenile court's finding, citing DCS' investigation and decision not to remove a third child born after the initial removal.

We first consider whether the juvenile court erred when it considered August 2007 to December 2007 as the relevant time period during which DCS complied with its statutory obligation to make reasonable efforts to help Mother establish a suitable home. The applicable statutory language defines abandonment by failure to establish a suitable home as follows:

The child has been removed from the home of the parent(s) or guardian(s) as the result of a petition filed in the juvenile court in which the child was found to be a dependent and neglected child, as defined in § 37-1-102, and the child was placed in the custody of the department or a licensed child-placing agency, that the juvenile court found, or the court where the termination of parental rights petition is filed finds, that the department or a licensed child-placing agency made reasonable efforts to prevent removal of the child or that the circumstances of the child's situation prevented reasonable efforts from being made prior to the child's removal; and for a period of four (4) months following the removal, the department or agency has

made reasonable efforts to assist the parent(s) or guardian(s) to establish a suitable home for the child, but that the parent(s) or guardian(s) have made no reasonable efforts to provide a suitable home and have demonstrated a lack of concern for the child to such a degree that it appears unlikely that they will be able to provide a suitable home for the child at an early date[.]

Tenn. Code Ann. § 36-1-102(1)(A)(ii) (2005 & Supp. 2009) (emphasis added).

Mother's reading of the statute would require DCS to make reasonable efforts during the first four months following removal, rather than during any four-month period following removal. Assuming *arguendo* that DCS was required to exercise reasonable efforts for the first four months following removal, Mother's argument in this case fails.⁸ The plain meaning of Tennessee Code Annotated section 36-1-102(1)(A)(ii) establishes that the only statutory "removal" sufficient to trigger DCS' obligation to make reasonable efforts occurred in August 2007. "The cardinal rule of statutory construction is to follow the plain meaning of the statute where the language is clear and unambiguous on its face." *Jackson v. General Motors Corp.*, 60 S.W.3d 800, 804 (Tenn. 2001). The relevant language in the above statute provides that DCS has no obligation to make reasonable efforts to assist a parent to establish a suitable home until (1) removal occurs as a result of a dependency and neglect petition and (2) the removed child is placed in the custody of DCS or a licensed child-placing agency. The removal that resulted from the filing of the dependency and neglect petition and that placed the children into DCS' custody occurred on August 22, 2007.⁹ Mother conceded in her brief that the safety placement happened "approximately four months *prior to* placement with [DCS]." We conclude that DCS became obligated to use reasonable efforts to help Mother establish a suitable home no sooner than August 22, 2007.

Mother next challenges whether DCS made reasonable efforts for a four-month period following the August 2007 removal and relatedly whether clear and convincing evidence supported the juvenile court's finding. The court's termination order found clear and convincing evidence to establish the ground of abandonment:

⁸The statutory language in question provides only that DCS must make reasonable efforts "for a *period* of four (4) months following the removal" Tenn. Code Ann. § 36-1-102(1)(A)(ii) (2005 & Supp. 2009) (emphasis added). A quick survey of this Court's case law suggests that the Code does not limit the window during which DCS may satisfy its obligation to make reasonable efforts to the four-month period directly following statutory removal. *See, e.g., In re B.T.*, No. M2008-00946-COA-R3-PT, 2008 WL 4922532, at *8 (Tenn. Ct. App. Nov. 13, 2008) (*no perm. app. filed*) (evaluating the four-month period preceding the filing of DCS' termination petition); *In re J.C.W.*, No. M2007-02433-COA-R3-PT, 2008 WL 4414675, at *4-6 (Tenn. Ct. App. Sept. 26, 2008) (*no perm. app. filed*) (examining both the four-month period following removal and the four-month period preceding the filing of DCS' termination petition).

⁹It is unclear exactly what the "safety placement" with H.P. entailed. The guardian ad litem's brief suggests that the State did not compel the safety placement. The record indicates that DCS filed its petition to adjudicate the children dependent and neglected on May 8, 2007, subsequent to placement with H.P. Without evidence to show that the safety placement resulted from the filing of a petition in the juvenile court in which the children were found to be dependent and neglected, we find no prior "removal" sufficient to trigger DCS' obligation to make reasonable efforts.

Under Tenn. Code Ann. §§ 36-1-113(g)(1) and 36-1-102(1)(A)(ii), the Court may terminate a parent's parental rights when the children have been removed for four months and, despite reasonable efforts made by the Department, she has not made reasonable efforts to provide a suitable home and has demonstrated a lack of concern for the children such that it appears unlikely the mother will be able to provide a suitable home at an early date.

In this case, the Court finds that there is clear and convincing evidence that [Mother] has abandoned the children by failing to provide a suitable home. In the four month period immediately following the removal of the children, [Mother's] actions do not show an emphasis on regaining custody of her children. [Mother] was incarcerated for a brief time due to failing to appear in court. The Department discussed with [Mother] what was needed to have a suitable home and provided monetary support in eliminating the rent arrearage that [Mother] owed. The Department also contacted numerous places of residence in an effort to find suitable housing for [Mother]. [Mother] has failed to resolve her housing issues with MDHA and instead chooses to reside with other[s]. [Mother] has never shown this Court an ability to care for these children by herself. [Mother] has shown no real efforts to get housing. She is not legally residing with [T.O.] and is in an instable housing situation.

[Mother] continues to be dependent upon others for her housing. The Court does not find that this is a stable home environment. Therefore, this Court finds by clear and convincing evidence that [Mother] abandoned the children by failing to provide a suitable home.

The record fully supports a finding on the ground of abandonment by failure to establish a suitable home. DCS made reasonable efforts to help Mother establish a suitable home for the children in the four months following removal in August 2007. DCS held two child and family team meetings, investigated two relative placements, developed permanency plans for the children, attempted to schedule an intake appointment with the Mental Health Cooperative, informed Mother that only she could schedule the intake appointment at the Mental Health Cooperative, twice requested funding for a parenting assessment that did not occur due to the provider's inability to locate Mother, arranged for therapeutic visitation that the Drug Court suspended after Mother failed a drug test, paid \$316 towards Mother's rent arrearage, monitored Mother's progress at drug treatment, arranged for a drug assessment with Mike Jones, provided Mother with a bus pass to attend appointments, and contacted Mother on a weekly basis.

Mother, on the other hand, made no reasonable effort to provide a suitable home and demonstrated a lack of concern for her children to such a degree that it appeared unlikely she would be able to provide a suitable home for the children at an early date. Mother lived at numerous places during the pendency of this case including J.C. Napier Homes, several treatment facilities, her grandmother's house, and T.O.'s residence. At the time of the termination hearing, Mother could

not obtain housing with the Metro Development and Housing Agency (“MDHA”) because she had an outstanding balance of over \$11,500. Mother incurred an \$11,000 charge after her housing unit burned down while she was in treatment. MDHA purportedly offered to remove the \$11,000 charge if Mother produced paperwork to show that she was in treatment when the fire occurred. Prior to the termination hearing, Mother did not provide MDHA with the sought-after paperwork and did not pay her outstanding rent balance of \$500. Testimony at the termination hearing supported the conclusion that Mother was impermissibly residing with T.O. because she had not resolved her fine with MDHA.¹⁰

We disagree with Mother’s assertion that the decision of DCS not to remove her third child prior to the termination hearing compels a different conclusion. This Court addressed a similar argument in *In re Baker*, No. W1998-00606-COA-R3-CV, 1999 WL 1336044 (Tenn. Ct. App. Dec. 28, 1999). The mother in *In re Baker* gave birth to three children after DCS removed six other children. *In re Baker*, 1999 WL 1336044, at *4. This Court determined that a decision by DCS not to remove Mother’s three most recently born children did not directly bear on the question before it:

In support of their claim that conditions have been improved, the appellants’ [sic] point out that three children remain in the home. This argument rests on the assumption that the Department of Children’s Services would not allow these children to remain in the home if conditions were less than adequate. We find this line of reasoning unpersuasive because the conditions of the two sets of children are not necessarily the same. The fact that the six children were removed from the home does not mean that the three remaining children should be removed. Similarly, the fact that three children remain in the home is not evidence that the other children should be returned. Each situation is independent of the other and should be judged as such.

Id. (footnote omitted); *see also State Dep’t of Human Servs. v. Manier*, C.A. No. 01A01-9703-JV-00116, 1997 WL 675209, at *6 (Tenn. Ct. App. Oct. 31, 1997), *perm. app. denied* (Tenn. Mar. 2, 1998) (“As to the children presently in her home, we find no error by the trial court in failing to consider this fact. It is the children herein named with whom we are concerned in addressing the issues before us.”).

We reach the same conclusion here. The fact that Mother resided with her third child at various places immediately preceding the termination hearing did little to show that Mother obtained stable housing. There was no question that Mother and her third child resided at T.O.’s place of residence for less than two weeks prior to the termination hearing and there was no guarantee that Mother would be able to remain there. Further, Ms. Adcock explained that the ability to parent and

¹⁰ The contents of T.O.’s lease agreement are not in the record. There is also no express indication that T.O. lives in MDHA housing. Mother, however, admitted that she cannot join the lease agreement due to her outstanding balance with MDHA.

establish a suitable home for one child is not the same as the ability to provide for three children. We conclude that DCS clearly and convincingly established the ground of abandonment and affirm the juvenile court's finding.

ii. Persistence of Conditions

Mother also argues that DCS did not clearly and convincingly prove the ground of persistence of conditions. Tennessee Code Annotated section 36-1-113(g)(3) establishes a ground for termination where

[t]he child has been removed from the home of the parent or guardian by order of a court for a period of six (6) months and:

(A) The conditions that led to the child's removal or other conditions that in all reasonable probability would cause the child to be subjected to further abuse or neglect and that, therefore, prevent the child's safe return to the care of the parent(s) or guardian(s), still persist;

(B) There is little likelihood that these conditions will be remedied at an early date so that the child can be safely returned to the parent(s) or guardian(s) in the near future; and

(C) The continuation of the parent or guardian and child relationship greatly diminishes the child's chances of early integration into a safe, stable and permanent home[.]

Tenn. Code Ann. § 36-1-113(g)(3)(A)-(C) (2005 & Supp. 2009). A finding on the ground of persistence of conditions is not appropriate unless DCS presents clear and convincing evidence to establish each statutory element. *In re Giorgianna H.*, 205 S.W.3d 508, 518 (Tenn. Ct. App. 2006) (citing *In re Valentine*, 79 S.W.3d 539, 550 (Tenn. 2002)).

The conditions that required removal of the children from Mother's care were her habitual drug use and consequent instability. The juvenile court found clear and convincing evidence to show that these conditions persisted:

[Mother] continues to lack stability in her employment, depends on others for her housing needs, and as recently as August, 2008, continued to test positive for drugs. There is the very real possibility that [Mother] will lose her current housing at any time due to not being properly on the lease. [Mother] has not shown to the Court that these conditions will be remedied soon. [J.D.L.] has never resided with [Mother] and has always been cared for by others. [D.M.L.] has spent more than half of his young life in the care of others. [Mother] has never cared for both children at once by herself and has not satisfied this Court that she is able to [do] so. Lastly, [Mother] has not demonstrated any meaningful and lasting efforts to remain drug free. Therefore, the conditions that necessitated foster care for the children persist. Prolonging the children's time in DCS custody is not in their best interest. Therefore,

prolonging the parent/child relationship clearly diminishes the children's chances of early integration into a safe, stable home.

We hold that clear and convincing evidence supported the juvenile court's finding of persistence of conditions. Mother admitted using drugs while pregnant with her third child and admitted using drugs after she entered the Rainbow program in September 2008. She has since refused to follow a single recommendation of her discharge, but admitted drinking at clubs. She obtained employment and housing less than two weeks before the termination hearing and did not know how many hours she would be able to work. Mother's life was no more stable than it was when the children entered DCS' custody. As a result, it appeared unlikely that she would be in a position to provide a safe home for her children at an early date. *See generally State, Dep't of Children's Servs. v. Stinson*, No. W2006-00749-COA-R3-PT, 2006 WL 3054604, at *16 (Tenn. Ct. App. Oct. 30, 2006), *perm. app. denied* (Tenn. Feb. 5, 2007) (finding persistence of conditions under comparable facts). We wish Mother well in her endeavor to become drug free and provide a suitable home for her third child, but conclude that DCS clearly and convincingly established the ground of persistence of conditions as to J.D.L. and D.M.L.

iii. Substantial Noncompliance

Mother next challenges the juvenile court's finding of substantial noncompliance with the statement of responsibilities in her permanency plans. Tennessee Code Annotated section 36-1-113(g)(2) establishes a ground for termination if "[t]here has been substantial noncompliance by the parent or guardian with the statement of responsibilities in a permanency plan or a plan of care pursuant to the provisions of title 37, chapter 2, part 4." Tenn. Code Ann. § 36-1-113(g)(2) (2005 & Supp. 2009). Termination for substantial noncompliance is warranted only when the plan's requirements are "reasonable and related to remedying the conditions which necessitate foster care placement." *In re Valentine*, 79 S.W.3d at 547 (quoting Tenn. Code Ann. § 37-2-403(a)(2)(C)). The determination of whether noncompliance is substantial compares the degree of noncompliance with the importance of the unmet obligation. *In re M.J.B.*, 140 S.W.3d 643, 656 (Tenn. Ct. App. 2004) (citations omitted). "Trivial, minor, or technical deviations from a permanency plan's requirements will not be deemed to amount to substantial noncompliance." *Id.* at 656-57 (citations omitted).

The juvenile court found clear and convincing evidence to establish this ground. The court found the following requirements of Mother's permanency plans reasonably related to remedying the conditions that required removal: (1) submitting to random drug screens and following the guidelines of the drug court, (2) completing a parenting assessment and following recommendations, (3) securing appropriate and stable housing, (4) securing legal income, and (5) completing a mental health assessment and following recommendations. The court primarily relied on Mother's ongoing drug addiction and inability to secure stable housing or income as clear and convincing evidence to support a finding of substantial noncompliance.

The juvenile court, to a certain extent, incorrectly focused its decision on Mother's noncompliance with the desired outcomes listed in her permanency plans.¹¹ The question of substantial noncompliance turns on whether the parent complied with a plan's statement of responsibilities, not whether the parent achieved its desired outcomes. *State, Dep't Children's Servs. v. P.M.T.*, No. E2006-00057-COA-R3-PT, 2006 WL 2644373, at *8 (Tenn. Ct. App. Sept. 15, 2006). The court stated in its termination order that the critical issue for Mother was her drug addiction and explained that reunification was not possible until she overcame that addiction. The court found that Mother's failure to successfully address her drug problem supported its finding on the ground of substantial noncompliance. The court should have instead focused on Mother's efforts to complete the requirements of her permanency plans that related to her drug use. *See In re B.D.*, No. M2008-01174-COA-R3-PT, 2009 WL 528922, at *7-8 (Tenn. Ct. App. Mar. 2, 2009), *perm. app. denied* (Tenn. May 18, 2009).

Although Mother did not become drug free, our review of the record reveals that Mother complied with several provisions of the permanency plan related to becoming drug free. Mother submitted to random drug screens, received an alcohol and drug assessment, and completed a drug treatment program. DCS did not produce evidence to show whether Mother complied with the recommendations of her alcohol and drug assessment. It is also not clear whether Mother violated Drug Court guidelines, which are not in the record. Additionally, Mother received a parenting assessment, attended parenting classes, and received a mental health assessment. It is apparent that the juvenile court erred to the extent it found substantial noncompliance based on Mother's failure to become drug free.

The juvenile court's analysis, however, did not end there. The court also relied on Mother's failure to comply with her plans' requirements to establish stable income and obtain stable housing, which the record supports. The determinative question therefore is whether Mother's failure to secure stable housing and income is "substantial" noncompliance. The Tennessee Supreme Court has defined "substantial" noncompliance as that "[o]f real worth and importance," explaining that courts should determine the real worth and importance of a parent's noncompliance by considering the degree of noncompliance and the importance of the disregarded requirement. *In re Valentine*, 79 S.W.3d at 548 (Tenn. 2002) (alteration in original) (quoting Black's Law Dictionary 1428 (6th ed. 1990)). We focus here on the great importance of establishing a stable setting in which to raise and support these children and conclude that Mother's failure to make any meaningful attempts to obtain stable income or housing amounted to substantial noncompliance. Mother's belated efforts to find housing and income less than two weeks before the final termination hearing were "too little, too late." *See State Dep't of Children's Servs. v. B.L.K.*, No. E2002-01724-COA-R3-JV, 2003 WL 21220830, at *8 (Tenn. Ct. App. May 20, 2003) (finding a parent's "last minute ability to secure employment two days before the second day of trial began . . . too little too late"). We hold that DCS clearly and convincingly established the ground of substantial noncompliance.

¹¹The court also focused on several examples of Mother's failure to take action that, while not required by the permanency plans, would have significantly aided her recovery.

C. Best Interests

We proceed to consider whether termination of Mother's parental rights is in the children's best interests. Termination of a parent's rights and responsibilities is appropriate only when clear and convincing evidence establishes that termination is in the best interests of a child. Tenn. Code Ann. § 36-1-113(c)(2) (2005 & Supp. 2009). The general assembly has established a non-exhaustive list of factors to consider when determining the best interests of a child:

- (1) Whether the parent or guardian has made such an adjustment of circumstance, conduct, or conditions as to make it safe and in the child's best interest to be in the home of the parent or guardian;
- (2) Whether the parent or guardian has failed to effect a lasting adjustment after reasonable efforts by available social services agencies for such duration of time that lasting adjustment does not reasonably appear possible;
- (3) Whether the parent or guardian has maintained regular visitation or other contact with the child;
- (4) Whether a meaningful relationship has otherwise been established between the parent or guardian and the child;
- (5) The effect a change of caretakers and physical environment is likely to have on the child's emotional, psychological and medical condition;
- (6) Whether the parent or guardian, or other person residing with the parent or guardian, has shown brutality, physical, sexual, emotional or psychological abuse, or neglect toward the child, or another child or adult in the family or household;
- (7) Whether the physical environment of the parent's or guardian's home is healthy and safe, whether there is criminal activity in the home, or whether there is such use of alcohol or controlled substances as may render the parent or guardian consistently unable to care for the child in a safe and stable manner;
- (8) Whether the parent's or guardian's mental and/or emotional status would be detrimental to the child or prevent the parent or guardian from effectively providing safe and stable care and supervision for the child; or
- (9) Whether the parent or guardian has paid child support consistent with the child support guidelines promulgated by the department pursuant to § 36-5-101.

Tenn. Code Ann. § 36-1-113(i)(1)-(9) (2005 & Supp. 2009).

The juvenile court found termination was in the best interests of the children for the following reasons:

[M]other has not made any adjustment of circumstances, conduct or conditions as to make it safe and in the children's best interest to return to her care. The Department has made reasonable efforts to assist [Mother] by providing supervised and therapeutic visits, administering drugs screens to ensure [Mother's] sobriety, assisting with an A&D assessment and treatment, providing a parenting assessment, assisting

with transportation, and assisting with rent. [Mother] continues [to] be dependent on another for her housing and has only maintained her current job for a very short period of time. [Mother's] ability to sustain the improvements is questionable at best.

The Court finds the children do have a relationship with [Mother] but that it is not a mother/child relationship. [Mother] cannot provide for them or parent them as their mother. The Court must look to what in [sic] best for the children, not what the mother wants. The children are bonded to their foster parent and the foster parent is bonded to them. The Court also finds that changing caregivers at this point in the children's lives would likely have a detrimental effect on them. The children have been cared for by the foster parent very diligently for over a year. The foster parent ensures the children receive all of the necessary care and have [sic] provided a loving, stable home for them. The foster parent wishes to adopt the children and continue providing a safe, stable environment for them.

Having reviewed the record, we conclude that the juvenile court correctly applied the relevant statutory factors and that clear and convincing evidence showed that termination was in the best interests of the children. We agree with the juvenile court's assessment that the needs of the children prevail over the wants of the mother. The general assembly has provided that if "the best interests of the child and those of the adults are in conflict, such conflict shall always be resolved to favor the rights and the best interests of the child, which interests are hereby recognized as constitutionally protected and, to that end, this part shall be liberally construed." Tenn. Code Ann. § 36-1-101(d) (2005). To the extent there is conflict here, we conclude that the best interests of J.D.L. and D.M.L. weigh in favor of terminating Mother's parental rights.

V. Conclusion

For the foregoing reasons, we affirm the juvenile court's judgment terminating the parental rights of Mother. Costs of this appeal are assessed to the appellant, S.D.L.

DAVID R. FARMER, JUDGE